

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 980 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MITHABHAI MAGANBHAI

Versus

DIST SUPDT OF POLICE

Appearance:

MR YN OZA for Petitioner
MR SP HASURKAR for Respondent No. 1
MR PARESH UPADHYAY for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/06/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged the order dated 1.2.1988 retiring the petitioner on invalid pension (Annexure 'A' to the petition).

2. The petitioner joined the police department as a police constable on 16.5.1974 and was discharging his duty in the band branch and was posted at the Mehsana

Police head quarters. By now the petitioner has put in about 26 years service and is aged about 50 years. The petitioner had sustained a minor injury which resulted into serious complications and ultimately one of his legs was required to be amputated from thigh and, therefore, the petitioner was not in a position to render his services as a constable and was required to be retired on invalid pension with effect from 1.2.1988.

3. When the petition came up for preliminary hearing on 29.2.1988, this Court issued notice and granted ad-interim relief restraining the respondents from evicting the petitioner from the official quarter and also directing the respondents to allow the petitioner to discharge his duties as telephone operator at Mehsana Head quarter which duty he was assigned before passing of the impugned order dated 1.12.1988. Thereafter, at the admission hearing on 28.3.1988, after hearing the other side, this Court admitted the petition and confirmed the ad-interim relief as interim relief.

4. It is contended that the medical certificate dated 29.12.1987 at Annexure "B" of the Civil Surgeon on the basis of which the impugned order was passed did not show that the petitioner was not fit for doing any work. It clearly provided that the petitioner was fit for further service of a less labourious character. It was further certified that incapacity was not caused by, accelerated or aggravated or by any intemperate habits. It is, therefore, contended that when the petitioner was assigned light duty work as a telephone operator, there was no reason for the respondents to require the petitioner to proceed on invalid pension. In similar other cases enumerated in para 6 of the petition, such employees who were also in the cadre of a police constable were continued in service by assigning them light duty work.

5. Affidavit in reply dated 20.4.1988 has been filed by the District Superintendent of Police, Mehsana. It is stated that since one of the legs has been amputated from thigh, it is not possible to continue the petitioner in service as a police constable. It is also not possible to give any light duty work to the petitioner. As regards the work of a telephone operator, it is further stated as under :-

"In future as and when any post of telephone operator would become vacant, the petitioner would be considered for giving appointment to the said post."

6. In view of the fact that the petitioner is in continuous service since 1974 and that the petitioner has put in service for the last 26 years and in view of the fact that the petitioner was required to work as a Telephone Operator which work has been continued pursuant to the interim relief granted by this Court for the last 12 years and considering the fact that the deponent of the affidavit in reply has stated that in future as and when any post of telephone operator would become vacant, the petitioner would be considered for giving appointment to the said post, there is no reason why the Court should vacate the interim relief or to dismiss the petition.

7. In view of the above discussion, the petition is allowed. The impugned order dated 1.2.1988 at Annexure "A" to the petition is quashed and set aside. The respondents are directed to continue the petitioner in service by giving him light duty work like that of a telephone operator.

Rule is made absolute to the aforesaid extent.
There shall be no order as to costs.

June 23, 2000 (M.S. Shah, J.)
sundar/-